

## REMARKS/ARGUMENTS

### Claim Rejections

#### 35 U.S.C. § 102

The Examiner has stated:

As to **claim 9**, Coates et al teaches a medical port **10** for an emergency safety resuscitator having a collapsible bag **22** with an outlet, which comprises: a tube having a first aperture **28** for communicating with a collapsible bag of a resuscitator, a second aperture **12**, a third aperture **14** available for connection to a mask or an endotracheal tube, and an inside; and a siliconized (Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber) self-sealing membrane **34** (See **Col. 6, lines 29-35**) releasably covering the second aperture of said tube.

Claim 9 has been canceled.

#### 35 U.S.C. § 103

Next the Examiner has declared:

Claims 3 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al (US 5,333,606) in view of Coates et al (US 5,996,579).

As to **claim 3**, Schneider et al teaches a medical port **10** for an emergency safety resuscitator having a collapsible bag with an outlet, which comprises: a tube having a first aperture **13,14** for communicating with a collapsible bag of a resuscitator, a second aperture **15**, a third aperture **12** available for connection to a mask or an endotracheal tube, and an inside; and two or more strips at **19,20** of flexible plastic (See **Col. 5, lines 22-23 which discloses valve 16 comprising elements 19,20 to be made of a resilient material, which material the Examiner considers to broadly read on plastic as plastic can exhibit resilient properties**) each strip having a first end attached to the inside of the tube, between the first aperture and the second aperture, and a second end pushing against a second end of at least one other of said strips. Should Applicant contend the recitation of resilient material does not read on plastic, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the strips of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the

intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Schneider et al teaches essentially all of the limitations except for a self-sealing membrane releasably covering the second aperture of said tube. Coates et al teaches a medical port having a tube that includes a self-sealing membrane 34 releasably covering an aperture to provide an air tight seal before and after the introduction of medicament via a syringe/needle. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a releasable self-sealing membrane to the second aperture of Schneider et al so that there is an air-tight seal before and after the introduction of medicament via syringe/needle. Furthermore, such a sealing membrane would prevent debris from collecting into the aperture while not in use with the suction catheter.

Applicant respectfully believes that the Examiner may have been understandably misled by FIG. 2 in Schneider et al. (United States patent no. 5,333,606). Because this is a cross-sectional view and because of the location of the lead lines, it does appear that element 19 and element 20 are each strips. This is, however, not the case.

Schneider et al. (United States patent no. 5,333,606), in lines 24 through 45 of column 5 and 66 of column 5 through 10 of column 6, explains:

The base portion 17 of the valve 16 is formed to a generally cylindrical shape having an outer diameter equal to the inner diameter of the access port 15 and is fixed to the distal end 18 of the port 15 in a permanent, air-tight manner, such as by an adhesive or the like. The central portion 19 of the valve 16 is generally conical in shape. The top portion 20 of the valve 16 is normally constricted to a completely closed configuration which prevents passage of gases through the valve 16 under all normally occurring pressure differentials generated between the interior of the manifold 10 and the atmosphere during respiratory support of a patient.

As can be seen by the design of the valve 16, the central portion 19 and the top portion 20 thereof are designed so that they are assisted in remaining in their normally closed position whenever pressure within the manifold 12 is greater than atmospheric pressure. The constant excess pressure within the manifold 10 in a PEEP procedure, pushes against the central section 19 of the valve 16, and tends to force further collapse and closure of the valve 16 instead of forcing the valve 16 open.

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As best shown in FIG. 4, attachment of the male adaptor 11 to the respiratory manifold 10 is effected by insertion of the adaptor 11 into the opening

26 of the port 15 until the tapered top section 27 of the adaptor 11 engages the central portion 19 of the valve 16 and forces it toward the interior wall 28 of the port 15. Upon complete insertion of the adaptor 11 into the port 15, the central portion 19 of the valve 16 has been completely forced toward the interior wall 28, and the top portion 20 of the valve 16 has been stretched around the tapered top section 27 of the adaptor 11 to form an opening therethrough roughly equivalent to or greater in diameter than the top opening 29 of the adaptor 11.

Thus, the central portion 19 of the valve 16 is actually a truncated cone with the normally closed top portion 20 constituting the tip of the cone and being attached to the central portion 19.

Consequently, Schneider et al. lacks the two or more strips mandated by claim 3.

Therefore, combining Coates et al. (United States patent no. 5,996,579) with Schneider et al. could not create the device of claim 3. Applicant, thus, respectfully indicates that claim 3 is not unpatentable over Schneider et al. in view of Coates et al.

The Examiner then provides:

As to **claim 6**, the above combination teaches a medical port wherein the self-sealing membrane is siliconized. Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al/Coates et al as applied to claim 3 above, and further in view of Wilson (US 4,106,502).

As to **claim 4**, the above combination of Schneider et al/Coates et al teaches essentially all of the limitations except for wherein the tube is constructed of clear plastic. However, Wilson does teach the use of a clear plastic for the construction of tube so that the tube is lightweight and allows for internal viewing or visibility. Therefore, it would have been obvious to one of ordinary skill in the art to modify the tube of Schneider et al and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

As to **claim 5**, the above combination teaches a medical port wherein the self-sealing membrane is siliconized. Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber.

Claims 4, 5, and 6 all depend on claim 3. Hence, since Schneider et al. lacks the requisite strips, claims 4, 5, and 6 also lack such strips, rendering such claims not obvious in view of the cited references.

The Examiner has then observed:

**As to claim 8**, Coates et al teaches a medical port 10 for an emergency safety resuscitator having a collapsible bag 22 with an outlet, which comprises: a tube having a first aperture 28 for communicating with a collapsible bag of a resuscitator, a second aperture 12, a third aperture 14 available for connection to a mask or an endotracheal tube, and an inside; and a siliconized (Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber) self-sealing membrane 34 (See Col. 6, lines 29-35) releasably covering the second aperture of said tube. Coates et al teaches essentially all of the limitations except for wherein the tube is constructed of clear plastic. However, Wilson does teach the use of a clear plastic for the construction of tube so that the tube is lightweight and allows for internal viewing or visibility. Therefore, it would have been obvious to one of ordinary skill in the art to modify the tube of Schneider et al and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

Claim 8 has been canceled.

Subsequently, the Examiner has commented:

Claim 10 is rejected under 35 U.S.C. 102(b) as anticipated by Schneider et al (US 5,333,606) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schneider et al (US 5,333,606).

**As to claim 10**, Schneider et al teaches a medical port 10 for an emergency safety resuscitator having a collapsible bag with an outlet, which comprises: a tube having a first aperture 13,14 for communicating with a collapsible bag of a resuscitator, a second aperture 15, a third aperture 12 available for connection to a mask or an endotracheal tube, and an inside; and two or more strips at 19,20 of flexible plastic (See Col. 5, lines 22-23 which discloses valve 16 comprising elements 19,20 to be made of a resilient material, which material the Examiner considers to broadly read on plastic as plastic can exhibit resilient properties) each strip having a first end attached to the inside of the tube, between the first aperture and the second aperture, and a second end pushing against a second end of at least one other of said strips. Should Applicant

contend the recitation of resilient material does not read on plastic, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the strips of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Yet, claim 10 utilizes the same flexible strips as claim 3. Thus, with Schneider et al. lacking such strips, Schneider cannot, Applicant respectfully submits, anticipate claim 10; and claim is not obvious over Schneider.

Finally, the Examiner concludes:

Claim 11 rejected under 35 U.S.C. 103(a) as being unpatentable Schneider et al (US 5,333,606) in view of Wilson (US 4,106,502).

As to **claim 11**, Schneider et al teaches essentially all of the limitations except for wherein the tube is constructed of clear plastic. However, Wilson does teach the use of a clear plastic for the construction of tube so that the tube is lightweight and allows for internal viewing or visibility. Therefore, it would have been obvious to one of ordinary skill in the art to modify the tube of Schneider et al and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

Since claim 11 is dependent upon claim 10 and since Schneider et al. lacks the requisite strips, Applicant respectfully suggests that combining Schneider et al. and Wilson will not produce a device with the necessary strips, consequently showing that claim 11 is not obvious over Schneider et al. in view of Wilson.

Applicant respectfully requests the Examiner to allow claims 3 through 6 as well as 10 and 11.

DATED this 12th day of July, 2005.

Respectfully,

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